

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and Revise
the Regulation of Telecommunications Utilities.

Rulemaking 05-04-005
(Filed April 7, 2005)

**RULING OF ASSIGNED COMMISSIONER, COMMISSION PRESIDENT, AND
ADMINISTRATIVE LAW JUDGE SETTING HEARING AND REMAINDER OF
PHASE I SCHEDULE**

In September 2005, the Office of Ratepayers Advocates (ORA), The Utility Reform Network (TURN), and Disability Rights Advocates (DRA) (collectively, ORA) filed a response to the request for parties to submit motions for hearings. ORA explains that it entitles its pleading a "response" rather than a "motion," because it believes at this juncture in the proceeding, the Commission "has given the parties inadequate information on which to base a request for hearings." (Response at 1.) ORA contends that the Commission has broadly proposed significant changes to the existing regulatory framework for the four respondent utilities but never delineated the proposal for the parties. Instead, the Commission solicited proposals for a new framework, but did not articulate either the specific "problems" the parties should be attempting to solve with a proposed new regulatory framework, or the objectives of a "new framework."

Absent a set of specific and proposed regulations with identified objectives, for which record evidence could be generated and tried, ORA insists that it "sees nothing tangible to analyze" and "cannot determine whether evidentiary hearings are necessary or what particular issues hearings would

address." (Id. at 2.) Still, ORA suggests that if the Commission actually seeks to move toward significant regulatory change for any part of the telecommunications industry, it would be prudent to examine and scrutinize the relevant facts through evidentiary hearings. It reiterates arguments first raised in its May 13, 2005 Motion for Change of Schedule¹. Such as, if the Order Instituting Rulemaking (OIR) goes forward as proposed and modifies or reverses an estimated seven out of fourteen major decisions reached after evidentiary hearings, ORA contends that due process requires the Commission to give parties a "meaningful opportunity to examine the asserted factual basis for reversal or modification of all 14 of those major decisions."² ORA also urges the Commission to weigh and consider jurisdictional issues, programmatic history, existing administrative protocols, "the state and nature of statewide competition ... and their constituents in its decision-making process." (Id. at 3.)

Supporting ORA's overall response, Time Warner Telecom of California, LP (TWTC), Cox California Telcom, LLC (Cox), and XO assert that the public interest "compels a finding on the level of competition." They argue that Pacific Bell Telephone Company, doing business as SBC California, Verizon California, Inc., TURN, ORA, as well as Cox, have based their proposals for a regulatory scheme on their perceptions of the level of competition. And, there is a

¹ Joining ORA in that motion were Arrival Communications, Inc.; CALTEL; California Payphone Association; Navigator Telecommunications, LLC.; Pac-West Telecomm, Inc.; TURN; Utility Consumers' Action Network (UCAN); and XO Communications Services, Inc. (XO)

² In the Motion for Change of Schedule, ORA identified the following policies that could be affected by a change of regulatory structure and therefore may require evidentiary hearings: universal service, public purpose programs, treatment of yellow pages revenues, broadband deployment, and emergency services. See Motion for Change of Schedule at 8-9.

significant dispute about the level of competition between SBC California, Verizon and ORA, TURN and DRA, and Cox, although the parties have attempted to support their contentions in their pleadings, and in the accompanying documentation. TWTC, Cox, and XO point out that what has not occurred and what cannot happen without hearings, is for the “declarants” or “witnesses” to submit to cross-examination on their submissions. They maintain that unless the conflicting contentions on the level of competition are tested through cross-examination, the record will ultimately be left with unexamined opinions.

Verizon opposes the request for hearings primarily on three grounds. First, it notes that ORA has failed to comply with the procedure set out in the OIR directing parties how to seek evidentiary hearings in this proceeding, and thus has waived any rights thereto it claims to possess. Second, the extensive record of this proceeding belies ORA's claims that there was "inadequate information" upon which to base a proper evidentiary hearing motion. Third, Public Utility Code Section 1708 does not require evidentiary hearings in generically applicable quasi-legislative cases in which the Commission is developing new public policy. Verizon further contends that this proceeding is not, as ORA claims, an attempt to "modify or reverse" prior specific decisions that were reached after evidentiary hearings. Rather, here, the Commission is considering a brand new policy developed from the ground up for all large and mid-sized incumbents in California. As such, the Commission is acting in its legislative capacity, for which the California Supreme Court has held evidentiary hearings are not required. (Verizon Opposition at 5.)

Discussion

It was apparent during the September workshop that the issue of the level of competition is contentious. Although no party has identified a material factual dispute regarding the data underlying their competition analyses, a review of the framework proposals, comments and workshop transcripts reveal that there are clear differences of interpretation of such data. Thus, it appears that the record in this proceeding could be significantly enhanced by having the Respondents and any parties who submitted a competition analysis to produce their respective competition declarants(s) or sponsoring witnesses for cross-examination at a hearing before the Assigned Administrative Law Judge.

Respondents/parties will rely on the existing record as the basis for this hearing, since it is extensive and based on substantial discovery. Thus, we do not expect that there will be a need for taking one or more additional rounds of pre-filed testimony. The scheduled time should allow Respondents/parties enough time to prepare for cross-examination based on the record already developed without having to supplement the record through protracted additional discovery³.

At this time, the parties are advised that as I leave the Commission, President Peevey, consistent with standard Commission practice, will provide continuity in the management of this proceeding in order to bring the benefits of a revised and streamlined regulatory framework to the companies and ratepayers of California as soon as possible.

³ Any Respondent or party who regards pre-filed testimony as an essential tool for hearing preparation, may submit such testimony on or before January 13, 2006.

Revised Procedural Schedule

Evidentiary hearing limited to competition analysis⁴: January 30 – February 1, 2006

Opening Briefs: March 3, 2006

Reply briefs: March 17, 2006

Proposed Decision: April 25, 2006

Final Decision: May 25, 2006

IT IS SO RULED.

Dated December 16, 2005, at San Francisco, California.

/s/ SUSAN P. KENNEDY

Susan P. Kennedy
Assigned Commissioner

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
President

/s/ JACQUELINE A. REED

Jacqueline A. Reed
Administrative Law Judge

⁴ Respondents/Parties to produce for cross-examination, any and all declarants who filed a competition analysis, or if none, a witness who will sponsor the Respondents'/Parties' competition analysis contained in previously filed comments, if any.

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner, Commission President, and Administrative Law Judge's Ruling Setting Hearing and Remainder of Phase 1 Schedule on all parties of record in this proceeding or their attorneys of record.

Dated December 16, 2005, at San Francisco, California.

/s/ JOYCE TOM

Joyce Tom

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.